IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

TUESDAY, THE 7TH AUGUST 2007 / 16TH SRAVANA 1929

FAO.No. 73 of 2006()

AS.6/2003 of ADDL. DIST. COURT (ADHOC)III, PATHANAMTHITTA
OS.87/2001 of MUNSIFF COURT, RANNI

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: APPELLANT/RESPONDENT/PLAINTIFF

C.K.KUNJUKRISHNAN, MULAMOOTTIL HOUSE,
MANDIRAM P.O., RANNY, PATHANAMTHITTA.

BY ADV. SRI.JACOB P.ALEX

RESPONDENTS: APPELLANT/DEFENDANT

P.V.SOMARAJAN, KULATHUMKAL HOUSE,
KARIKULAM MURI, RANNI, PATHANAMTHITTA.

THIS FIRST APPEAL FROM ORDERS HAVING BEEN FINALLY HEARD ON 7.8.2007 THE COURT ON 07/08/2007 PASSED THE FOLLOWING:

K.PADMANABHAN NAIR, J.

F.A.O No.73 of 2006

Dated this the 7th day of August 2007

JUDGMENT

The plaintiff in O.S. 87 of 2001 on the file of the Munsiff's Court Ranny is the appellant. The appeal is filed against an order of remand passed by the lower appellate court by which it set aside the decree and judgment passed by the trial court, and remanded the suit for fresh disposal. The appellant filed a suit for relisation of 26,000/- due to him from the respondent. It was averred that the respondent issued two cheques drawn in the same account of the respondent. When the cheques were presented for collection they were dishonoured on the ground that 'drawer's signature differs'. Notice was issued. But the Amount was not repaid by the respondent. Hence the suit.

2. The respondent contended that the he did not borrow any amount from the appellant It was contended that the appellant was a money-lender The respondent used to canvass the persons, to borrow money from the appellant and some blank cheque leaves of the respondent came to the hands of the appellant and he forged the signature of the respondent and made entries and filed the suit before the trial court. The appellant gave evidence . He examined witnesses also to prove the execution of the document as well as the receipt of the original cheques and consideration . The trail court decreed the suit .

3. Challenging the decree and judgment an appeal was filed before the lower appellate court. Before the lower appellate court an argument was raised that the signatures in the cheques were disputed but the cheques were not properly proved. It was argued that the cheques would have been send for the examination by a handwriting expert. The lower appellate court set aside the decree and judgment passed by the trial court and the case was remanded to the trial court for fresh disposal after giving opportunity to the parties to adduce evidence including seeking assistance of a handwriting expert to give his opinion after comparison of signature in the original cheques. Challenging the decree and judgment this appeal is filed.

4. The learned counsel appearing for the appellant has argued that the claim of the appellant is not based on the cheques alone. It is argued that there was specific averment in the suit to the effect that plaintiff filed suit based on the original cause of action also. It is argued that the appellant examined PW4 a person who witnesses the handing over of the cheques by the respondent to the appellant and also the receipt of consideration by the respondent. The trial court which had an opportunity to watch the demeanour of the witnesses had accepted the averments and acted upon it. It is argued that the lower appellate court has not stated any reason for not accepting the evidence of PW4. It is also argued that the respondent himself during his oral evidence had

admitted that Exts. A1 & A2 cheques were handed over to the appellant by him, and as such the drawing of cheque is properly proved in this case. It is argued that the suit was pending before the trial court from 2001 and the suit was disposed of only on 30-11-2002. It is argued that at no point of time the respondent made a request to get the opinion of the hand-writing expert. It is argued that even before the lower appellate court no contention was raised that there was denial of opportunity to adduce evidence. No petition was filed before the lower appellate court to forward the cheques for expert opinion. The lower appellate court has relied on a number of decisions. There cannot be any quarrel regarding the principles stated in those decisions. But the question to be considered is whether the principles laid down in those decisions can have any application to the facts of this case. The lower appellate court ought to have considered the oral evidence adduced by the parties and the witnesses first. It should have considered whether there is any request made by the respondent for referring the disputed cheques for examination by an expert. In **Govindan Lakshmanan Vs. Sarada Prema 1997 (2) KLT 437** a Division Bench of this court has held that the execution of the disputed document is proved by examining independent witness, it is not necessary to rely on the opinion of the hand-writing expert. So merely because a contention was raised in the written

statement that the respondent has not affixed his signature in the disputed cheques, the lower appellate court ought not have set aside the decree and judgment. The lower appellate court went wrong in setting aside decree and judgment passed by the trial court and remanding the case solely for the purpose of giving an opportunity to the respondent to got the cheques examined by a handwriting expert. So I have no other option, but to set aside the order of remand and direct the lower appellate court to dispose of the appeal on its merits.

5. In the result, the F.A.O is allowed. The judgment of the lower appellate court dated 30-04-2005 setting aside the decree and judgment passed by the trial court and remanding the suit for fresh disposal is hereby setaside. The appeal is remanded to the lower appellate court for fresh disposal in accordance with law after hearing both sides and giving opportunity to the parties to adduce evidence before it. There will be a direction to the lower appellate court to dispose of the appeal as expeditiously as possible. The parties shall appear before the lower appelate court on 17-9-2007.

K.PADMANABHAN NAIR,JUDGE

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